IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.554 OF 2003

Raman B. Kapadia,
Aged about Major,
Occ: Business,
r/o Geeta Society
Camp, Pune. .... Petitioner

- Versus -

Amin Yakub Habib,
Aged about 51 years,
Occ: Business,
r/o 29 M.G. Road,
Pune. .... Respondent

Shri Shiv Motariya for the Petitioner.

Shri J.S. Kini for the Respondent.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: DECEMBER 17, 2004

ORAL JUDGMENT:

1. Heard. Rule. By consent, the rule is made returnable forthwith.

2. The petitioner challenges the orders passed by the lower Appellate Court rejecting the application for amendment of the written statement as well as the application for production of additional documents. The amendment which was sought to be carried out was to the effect that the plaintiff being the co-owner, having 1/3rd share in the suit property and the other co-owners

being not joined as parties, the suit has been filed without joining the necessary parties and is therefore liable to be dismissed. The documents which were sought to be produced were in the form of letters disclosing that the plaintiff is not the sole owner of the property but the co-owner. Challenging the impugned orders, reliance is sought to be placed in the decision of the Apex Court in the matter of **Smt. Kanta Goel v. B.P. Pathak and others,** reported in AIR 1977 SC 1599.

3. The lower Appellate Court has dismissed the application for amendment mainly on the ground that it is settled law that suit for eviction of a tenant can be filed by any one of the co-owners of the property and in that regard reliance is placed in the decision of the Apex Court, cited by the petitioner himself, as well as of the decision of this Court in the matter of **Dhanraj Bhuddsingh Gupta since deceased by Legal representative of deceased tenant Shashilata v. Dinesh Purshottam and others,** reported in 2002 (3) Mh.L.J. 666.

4. The application for production of documents at the appellate stage has been rejected on the ground that in view of the amendment application having been rejected and since the documents sought to be produced are in support of the pleadings which were sought to be introduced by way of amendment, and the same having been

rejected, the question of allowing the petitioner to produce the evidence does not arise.

5. The learned Advocate for the petitioner, drawing attention to para 7 of the decision of the Apex Court in **Smt. Kanta Goel's** case (supra) has sought to argue that when the other co-owners do not agree with the case pleaded by the plaintiff/co-owner, the defendant is entitled to contend that the other co-owners have no objection for continuation of the defendant/tenant in the suit premises and that therefore the other co-owners are necessary parties to such proceedings.

6. Admittedly, no plea to the effect that the other co-owners have no objection for the petitioner to continue to occupy the suit premises has been raised in the written statement at any point of time, not even in the application for amendment. Be it as it may, even otherwise the law is well-settled that in case of eviction of a tenant, it is not necessary to join all the co-owners as the parties to the suit. Even assuming that one of the co-owners may not agree with the plaintiff-co-owner in the proceedings for eviction of the tenant, nothing prevents the tenant from raising the specific plea in that regard, but mere non-joinder of even such co-owner who does not agree for eviction of the tenant, would not render the suit to be bad in law,

considering the provisions of Section 99 of the Code of Civil Procedure. In such circumstances, the presence of the co-owner may be appropriate in the sense that he is a proper party to the proceedings but certainly, he cannot be said to be a necessary party to the suit. The Apex Court in Smt. Kanta Goel's case in fact has clearly observed thus:-

> "This Court, in Sri Ram Pasricha, (1976-4 SCC 184) : (AIR 1976 SC 2335) clarified that a co-owner is as much an owner of the entire property as any sole owner of the property is: "Jurisprudentially, it is not correct to say that a co-owner of property is not its owner. He owns every part of the composite property along with others and it cannot be said that he is only a part owner or a fractional owner of the property .... It is, therefore, not possible to accept the submission that the plaintiff who is admittedly the landlord and co-owner of the premises, is not the owner of the premises within the meaning of S. 13(1)(f). It is not necessary to establish that the plaintiff is the only owner of the

> property for the purpose of S.13(1)(f) as long as he is a co-owner of the property, being at the same time acknowledged landlord of the defendants." That case also was one for eviction under the rent control law of Bengal. The law having been thus put beyond doubt, the contention that the absence of the other co-owners on records disentitled the first respondent from suing for eviction, fails."

7. The law on the point of entitlement of one of the co-owners to file the suit for eviction of a tenant in a co-ownership property is well-settled. The consent of other co-owners being totally irrelevant and not material for entertaining the suit against a tenant for his eviction by one of the co-owners, the proposed amendment was not necessary to decide the real question in controversy in the suit and hence no fault can be found with the order rejecting the application for amendment which was filed after the conclusion of the trial and at the appellate stage, and that too seeking to raise a plea contrary to settled law on the point, and therefore the impugned order dismissing the application for amendment does not disclose any jurisdictional error so as to warrant interference

therein in exercise of writ jurisdiction.

8. Once it is not disputed that the documents sought to be produced were in support of the plea sought to be raised by way of amendment, and the amendment itself has been rejected, question of allowing the additional evidence does not arise at all. That apart, the application for production of the additional evidence nowhere discloses the necessary ingredients of Order 41, Rule 27 of the C.P.C. having been satisfied. Being so, on that count also, the dismissal of such application cannot be found fault with. Hence the order of rejection of the application for production of the additional evidence also cannot be held to be disclosing any jurisdictional error on the part of the Court below.

9. The impugned orders neither disclose jurisdictional error nor any illegality on the part of the Court below and hence do not warrant interference in writ jurisdiction and therefore the petition fails and is hereby dismissed. Rule is discharged with no order as to costs.